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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,373	09/29/2003	Yehiel Gotkis	LAM2P445	5202

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EXAMINER

RACHUBA, MAURINA T

ART UNIT	PAPER NUMBER
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3723

MAIL DATE	DELIVERY MODE
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05/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary

Application No.

10/674,373

Applicant(s)

GOTKIS, YEHIEL

Examiner

Maurina Rachuba

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-15,20-27 and 29-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-15,20-27 and 29-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. In response to applicant's request of May 2, 2007, for withdrawal of the previous action, given that applicant successfully traversed Boyd as prior art (both Boyd and the application assigned to Lam Research Corporation, and were commonly owned at the time of filing of the application) in the response filed 31 October 2005. It was an oversight on the part of the examiner that Boyd was again cited as prior art in the action mailed 22 December 2006. This action replaces the previous Action.

Allowable Subject Matter

2. The indicated allowability of previous claims 4, 26-28 and 31 is withdrawn in view of the newly discovered reference(s) to Kunugi, 2002/0022440. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 3, 5-11, and 35-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benner et al, 6,508,697 in view of Kunugi, 2002/0022440. '697 discloses the claimed invention, except for a plurality of heads. '440, in a device for supplying solution to a polishing pad, teaches providing a plurality (more than one) heads that may be configured to span an application area. It would have been obvious to one of ordinary skill to have provided '697 with a plurality of heads, in place of the

single head, to allow solution to be placed where needed, thereby saving solution amounts and costs. Further, note that the claim language such as “may be configured”, “may contain”, “may be one of” or “may be one or a combination of” does not positively set forth the structure of the invention. For example, “the fluid may be one of...” is not limiting, and is not **required** to be present in prior art applied to the claims. Therefore, it is the examiner’s position that ‘697, in providing a head having an input and output reads on non-limiting claims 3, 7-8 and 38-39.

5. Regarding claim 6, this is a “product-by-process” claim. MPEP 2113 states in part: “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Here, there is an input in the head, and there is no evidence that the method of making the input results in a different product.

6. Claims 12-15, 20-27, 29-34 and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benner et al, 6,508,697 in view of Kunugi, 2002/0022440 as applied to claim 1 above, and further in view of Pant et al, 5,762,536. ‘697 as modified by ‘440 discloses the claimed invention except for the use of an inductive sensor, a computer, the computer in communication with the inductive sensor, the sensor capable of detecting topography height variations, (in changes in the gap between the platen

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and linear pad), the computer capable of providing control over the operation of the head. '536, in a similar device, teaches providing a CMP system with an inductive sensor, a computer, the computer in communication with the inductive sensor, the sensor capable of detecting topography height variations, (in changes in the gap between the platen and linear pad), the computer *capable* of providing control over the operation of the head and every other component in the system, please refer to column 4, lines 46 through column 6 lines 59. It would have been obvious to one of ordinary skill to have provided '697 as modified by '440 with the control system taught by '536, column 2, lines 43-49, to provide constant feed back and control of the system to improve the planarizing process. Further, note that the claim language such as "may be configured", "may contain", "may be one of" or "may be one or a combination of" does not positively set forth the structure of the invention. For example, "the fluid may be one of..." is not limiting, and is not **required** to be present in prior art applied to the claims. Therefore, it is the examiner's position that '697, in providing a head having an input and output reads on non-limiting claims 30-34.

Response to Arguments

7. Applicant's arguments with respect to claims 1-3, 5-15, 20-27, and 29-42 have been considered but are moot in view of the new ground(s) of rejection. As the amended claims do not present new issues, this action is made non-final to allow applicant fair opportunity to respond to the new grounds.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maurina Rachuba whose telephone number is 571 272 4493. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571 272 4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Maurina Rachuba
Primary Examiner
Art Unit 3723

